

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8  
9 LEONARD HAIRSTON,  
0711642,

10 *Plaintiff,*

11 vs.

12 LAS VEGAS METROPOLITAN POLICE  
13 DEPARTMENT, *et al.*,

14 *Defendants.*  
15

2:11-cv-01632-JCM-RJJ

ORDER

16 This *pro se* prisoner civil rights action comes before the court on plaintiff's application  
17 (#1) to proceed *in forma pauperis* and for initial review of the complaint under 28 U.S.C. §  
18 1915A.<sup>1</sup>

19 The court finds that plaintiff is unable to pay an initial partial filing fee toward the full  
20 filing pursuant to 28 U.S.C. § 1915(b)(1). The application to proceed *in forma pauperis*  
21 therefore will be granted, as per the remaining provisions in this order.

22 Turning to initial review, when a "prisoner seeks redress from a governmental entity  
23 or officer or employee of a governmental entity," the court must "identify cognizable claims  
24 or dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous,  
25 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary  
26 relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

27  
28 <sup>1</sup>While the clerk has docketed the action with plaintiff's name as "Leohard" Hairston, review reflects  
that plaintiff is the same Leonard Hairston who has filed several actions in this court in the past.

1 In considering whether the plaintiff has stated a claim upon which relief can be granted,  
 2 all material factual allegations in the complaint are accepted as true for purposes of initial  
 3 review and are to be construed in the light most favorable to the plaintiff. *See, e.g., Russell*  
 4 *v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal conclusions  
 5 unsupported by any actual allegations of fact are not assumed to be true in reviewing the  
 6 complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-51 & 1954, 173 L.Ed.2d 868  
 7 (2009). That is, bare and conclusory assertions that constitute merely formulaic recitations  
 8 of the elements of a cause of action and that are devoid of further factual enhancement are  
 9 not accepted as true and do not state a claim for relief. *Id.*

10 Further, the factual allegations must state a plausible claim for relief, meaning that the  
 11 well-pleaded facts must permit the court to infer more than the mere possibility of misconduct:

12 [A] complaint must contain sufficient factual matter,  
 13 accepted as true, to “state a claim to relief that is plausible on its  
 14 face.” [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127  
 15 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).] A claim has facial  
 16 plausibility when the plaintiff pleads factual content that allows the  
 17 court to draw the reasonable inference that the defendant is liable  
 18 for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The  
 19 plausibility standard is not akin to a “probability requirement,” but  
 20 it asks for more than a sheer possibility that a defendant has  
 21 acted unlawfully. *Ibid.* Where a complaint pleads facts that are  
 “merely consistent with” a defendant’s liability, it “stops short of  
 the line between possibility and plausibility of ‘entitlement to  
 relief.’ ” *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted).

... [W]here the well-pleaded facts do not permit the court  
 to infer more than the mere possibility of misconduct, the  
 complaint has alleged - but it has not “show[n]” - “that the pleader  
 is entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2).

22 *Iqbal*, 556 U.S. at \_\_\_, 129 S.Ct. at 1949-50.

23 Allegations of a *pro se* complainant are held to less stringent standards than formal  
 24 pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30  
 25 L.Ed.2d 652 (1972).

26 According to the allegations of the complaint, plaintiff Leonard Hairston is a pretrial  
 27 detainee being held in the Clark County Detention Center on Nevada state criminal charges.  
 28 He seeks to proceed against, in their individual and official capacities, the sheriff, two police

1 officers, and perhaps the Las Vegas Metropolitan Police Department alleging that he has  
2 been subjected to false arrest and false imprisonment. In count I, he alleges that he was  
3 subjected to an unlawful search and seizure in violation of the Fourth Amendment at the time  
4 of his February 17, 2008, arrest. In count II, he alleges that he was denied due process of  
5 law in violation of the Fifth Amendment because of an allegedly jurisdictionally defective  
6 criminal complaint filed on March 19, 2008. In count III, he alleges that he has been denied  
7 a right to a speedy trial under the Sixth Amendment because of delay from the February 17,  
8 2008, arrest through October 24, 2011, without having been brought to trial. Plaintiff  
9 additionally alleges in count III that he sustained "physical injuries of head, neck, back, from,  
10 fall, while in custody." Plaintiff seeks compensatory damages, punitive damages, and  
11 attorneys' fees, with no prayer for injunctive or declaratory relief.

12 At the outset, plaintiff's conclusory allegation only that he sustained physical injuries  
13 from a fall while in custody does not establish a basis for liability against any named  
14 defendant. Merely alleging that plaintiff was injured in a fall while in custody does not permit  
15 the court to infer more than the mere possibility of misconduct with regard to the alleged  
16 incident. The claim therefore will be dismissed with leave to amend to state a claim upon  
17 which relief may be granted, if possible.

18 With regard to the remaining claims, under the abstention doctrine in *Younger v.*  
19 *Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), absent extraordinary  
20 circumstances, a federal court may not interfere with a pending state criminal proceeding.  
21 Where *Younger* abstention is required, an action seeking only monetary damages must be  
22 stayed pending the outcome of the state proceedings. See, e.g., *Gilbertson v. Albright*, 381  
23 F.3d 965, 981 (9<sup>th</sup> Cir. 2004)(*en banc*); see also *Wallace v. Kato*, 549 U.S. 384, 393-94, 127  
24 S.Ct. 1091, 1098, 166 L.Ed.2d 973 (2007)(if a damage action would impugn a possible future  
25 conviction, a stay may be appropriate until the criminal proceedings are concluded); *Heck v.*  
26 *Humphrey*, 512 U.S. 477, 487 n.8, 114 S.Ct. 2364, 2373 n.8, 129 L.Ed.2d 383 (1994)(similar).  
27 *Younger* abstention may be raised by the federal court *sua sponte*. See, e.g., *San Remo*  
28 *Hotel v. City and County of San Francisco*, 145 F.3d 1095, 1103 n.5 (9<sup>th</sup> Cir. 1998).

1 Plaintiff accordingly will be required to show cause in writing why this action should not  
2 be stayed on the basis of *Younger* abstention.

3 IT THEREFORE IS ORDERED that plaintiff's application (#1) to proceed *in forma*  
4 *pauperis* is GRANTED. Plaintiff shall not be required to pay an initial partial filing fee.  
5 However, even if this action is dismissed, the full filing fee must still be paid pursuant to 28  
6 U.S.C. § 1915(b)(2).

7 IT FURTHER IS ORDERED that the movant herein is permitted to maintain this action  
8 to conclusion without the necessity of prepayment of any additional fees or costs or the giving  
9 of security therefor. This order granting *forma pauperis* status shall not extend to the  
10 issuance of subpoenas at government expense.

11 IT FURTHER IS ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), the Clark County  
12 Detention Center shall pay to the clerk 20% of the preceding month's deposits to plaintiff's  
13 account (in the months that the account exceeds \$10.00) until the full \$350.00 filing fee has  
14 been paid for this action. If plaintiff should be transferred and become under the care of the  
15 Nevada Department of Corrections, the CCDC Accounting Supervisor is directed to send a  
16 copy of this order to the attention of the Chief of Inmate Services for the Nevada Department  
17 of Corrections, P.O. Box 7011, Carson City, NV 89702, indicating the amount that plaintiff has  
18 paid toward his filing fee, so that funds may continue to be deducted from plaintiff's account.  
19 **The Clerk shall send a copy of this order to the CCDC Accounting Supervisor, 330 S.**  
20 **Casino Center Blvd., Las Vegas, NV 89101.**

21 IT FURTHER IS ORDERED that the clerk shall file the complaint.

22 IT FURTHER IS ORDERED that count III is DISMISSED IN PART without prejudice  
23 for failure to state a claim upon which relief may be granted, to the extent that plaintiff claims  
24 that he was physically injured from a fall while in custody, subject to leave to amend within  
25 thirty (30) days of this order.

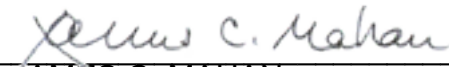
26 IT FURTHER IS ORDERED that, within thirty (30) days of entry of this order, plaintiff  
27 shall SHOW CAUSE in writing why this action should not be stayed on the basis of  
28 *Younger* abstention.

1 If plaintiff fails to timely respond to this show cause order, or if he fails to demonstrate  
2 that *Younger* abstention is not appropriate in this case, the action will be stayed as to all  
3 remaining claims for relief pending the outcome of petitioner's pending state criminal  
4 proceedings, through to the completion of all proceedings on direct review of any judgment  
5 of conviction.

6 If a stay order is entered in this action, the case will be administratively closed, without  
7 entry of a final judgment, until such time as an order is entered reopening the action.

8 Nothing in this order precludes dismissal on any other basis warranted under the  
9 circumstances then presented, without regard to whether a stay has or has not been entered.<sup>2</sup>

10 DATED: December 20, 2011.

11  
12  
13   
14 JAMES C. MAHAN  
United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

26  
27 <sup>2</sup>The court expresses no opinion at this juncture as to whether the remaining claims for relief in the  
28 complaint otherwise ultimately may be subject to dismissal on other grounds, including but not limited to  
untimeliness and/or failure to state a claim upon which relief may be granted as to the defendants named or  
otherwise.